Re Tan Ah Poi; ex p Multi-Purpose Finance Bhd

HIGH COURT (JOHOR BAHRU) — BANKRUPTCY NO 29–2096 OF 1996
ABDUL MALIK ISHAK J
7 APRIL 1999

Bankruptcy *— Notice — Setting aside — Judgment of the High Court pending appeal before the Court of Appeal — Whether final judgment within meaning of s 3(1)(i) of Bankruptcy Act 1967*

The judgment creditor's claim against the judgment debtor was dismissed by the sessions court. On appeal to the High Court, the decision of the sessions court was reversed and judgment was entered against the judgment debtor ('the High Court judgment'). The judgment debtor subsequently lodged an appeal to the Court of Appeal. Relying on the High Court judgment, the judgment creditor proceeded to issue a bankruptcy notice against the judgment debtor. The judgment debtor then applied to stay the bankruptcy proceedings pending the hearing of the appeal to the Court of Appeal; or alternatively to set aside the bankruptcy notice. The issue was whether the High Court judgment, which was pending appeal before the Court of Appeal, is a final judgment within the meaning and purport of s 3(1)(i) of the Bankruptcy Act 1967.

Held, dismissing the application:
The High Court judgment was a judgment that was decided by way of an appeal from the decision of the sessions court. It finally disposed of the rights of the parties notwithstanding that the appeal proper to the Court of Appeal was still pending. The High Court judgment must therefore be construed as final notwithstanding that the appeal was still pending in the Court of Appeal (see p 563D–E); *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 followed. Therefore, the judgment creditor was entitled to issue the bankruptcy notice against the judgment debtor notwithstanding the fact that the judgment debtor has filed an appeal to the Court of Appeal (see p 566F).

[Bahasa Malaysia summary

Tuntutan pemiutang penghakiman terhadap penghutang penghakiman telah ditolak oleh mahkamah sesyen. Semasa rayuan ke Mahkamah Tinggi, keputusan mahkamah sesyen telah diakas dan penghakiman telah dimasukkan terhadap penghutang penghakiman ('penghakiman Mahkamah Tinggi tersebut'). Kemudian, penghutang penghakiman telah membuat rayuan ke Mahkamah Rayuan. Dengan bergantung kepada penghakiman Mahkamah Tinggi, pemiutang penghakiman telah mengeluarkan notis kebankrapan terhadap penghutang penghakiman. Penghutang penghakiman kemudiannya

telah memohon agar prosiding kebankrapan digantungkan sehingga pendengaran rayuan di Mahkamah Rayuan selesai; atau secara alternatif untuk mengketepikan notis kebankrapan tersebut. Isu adalah sama ada penghakiman Mahkamah Tinggi tersebut, yang menunggu rayuan di hadapan Mahkamah Rayuan, adalah penghakiman muktamad di bawah maksud dan tujuan s 3(1)(i) Akta Kebankrapan 1967.

Diputuskan, menolak permohonan:
Penghakiman Mahkamah Tinggi merupakan penghakiman yang diputuskan melalui satu rayuan dari keputusan mahkamah sesyen. Ia menyelesaikan hak pihak-pihak walaupun rayuan di Mahkamah Rayuan belum selesai. Penghakiman Mahkamah Tinggi mestilah ditafsirkan sebagai muktamad walaupun rayuan di Mahkamah Rayuan belum selesai (lihat ms 563D–E); *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 diikut. Oleh itu, pemiutang penghakiman berhak untuk mengeluarkan notis kebankrapan terhadap penghutang penghakiman walaupun penghutang penghakiman telah memfailkan rayuan di Mahkamah Rayuan (lihat ms 566F).]

Notes

For cases on setting aside a bankruptcy notice generally, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1699–1816.

Cases referred to

Attorney General v Great Eastern Railway Co (1879) 27 WR 759 (refd)
Attorney General v Mutual Tontine Westminster Chambers Association Ltd (1876) 1 Ex D 469 (refd)
Bozson v Altrincham Urban District Council [1903] 1 KB 547 (refd)
Bradlaugh v Clarke (1883) 8 App Cas 354 (refd)
Capper v Baldwin [1965] 2 QB 53 (refd)
City of Manchester, The (1880) 5 PD 221 (refd)
Clyne v Deputy Commissioner of Taxation (1982) 42 ALR 703 (refd)
Colt Industries, Inc v Sarlie (No 2) [1966] 3 All ER 85 (refd)
Corporation of the City of Victoria v Bishop of Vancouver Island [1921] 2 AC 384 (refd)
Corocraft Ltd & Anor v Pan American Airways Inc [1969] 1 QB 616 (refd)
Davies Jenkins & Co Ltd v Davies (Inspector of Taxes) [1967] 2 WLR 1139 (refd)
Fawsitt, Re; Galland v Burton (1885) 30 Ch D 231(refd)
Flatau, Re; ex p Scotch Whisky Distillers Ltd (1888) 21 QBD 83 (refd)
Forbes-Smith v Forbes Smith and Chadwick [1901] P 258 (refd)
Gladys Sarah Becker v City of Marion Corp & Anor [1977] AC 271 (refd)

Hanning v Maitland [1969] 3 All ER 1558; [1969] 1 WLR 1885 (refd)
Haron bin Mohd Zaid v Central Securities (Holdings) Bhd [1982] 2 MLJ 94 (refd)
Herbert Reeves & Co, Re [1902] 1 Ch 29 (refd)
Holmes v Bradfield Rural District Council [1949] 2 KB 1 (refd)
Light v William West & Sons Ltd [1926] 2 KB 238 (refd)
Marchioness of Huntly v Gaskell [1905] 2 Ch D 656 (refd)
Marsden & Wife v The Lancashire and Yorkshire Railway Co (1881) 7 QBD 641 (refd)
Maunsell v Olins & Anor [1974] 3 WLR 835 (refd)
MSA Zachariah, Re; ex p Boon Siew Finance Bhd [1993] 2 AMR 1158 (refd)
No 12 Regent St, Oxford, Re [1948] Ch 735 (refd)
Punca Klasik Sdn Bhd [1996] 4 MLJ 533 (refd)
R v Banbury (Inhabitants) (1834) 1 A & E 136 (refd)
R v St Lawrence, Ramsgate (Inhabitants) (1827) 6 B & C 712 (refd)
R v The Commissioners of Income Tax (1888) 22 QBD 296 (refd)
Salaman v Warner & Ors [1891] 1 QB 734 (refd)
Shaw v Hertfordshire County Council [1899] 2 QB 282 (refd)
Shubrook v Tufnell [1882] 9 QBD 621 (refd)
Smith v Davies (1886) 31 Ch D 595 (refd)
Tee Than Song Construction Co Ltd v Kwong Kum Sun Glass Merchant [1967] 2 MLJ 205 (refd)
Walter Su, Re; ex p United Malayan Banking Corp Bhd [1987] 1 MLJ 44 (refd)
Warburton v Loveland (1832) 2 D & Cl 480 (refd)
White v Brunton [1984] QB 570 (refd)

Legislation referred to

Bankruptcy Act 1967 ss 3(1)(i), s 6(4)
Australian Bankruptcy Act 1966 s 40(1)(g)

PR Chua (*Leng & Co*) for the judgment creditor.
Mathews George (*Danaraj Mathews Jimmy & Sara*) for the judgment debtor.

Abdul Malik Ishak J: This is an appeal by the judgment creditor Multi-Purpose Finance Bhd (formerly known as Magnum Finance Bhd) in encl 22A against the decision of the senior assistant registrar dated 1 October 1998 which allowed the judgment debtor's (Tan Ah Poi's) application in encl 17 to set aside the bankruptcy notice issued by the judgment creditor against the judgment debtor.

The relevant enclosures that would be referred to in this judgment would be as follows:

(1) the notice of appeal in encl 22A;
(2) the request to issue a bankruptcy notice in encl 2;

(3) the bankruptcy notice itself in encl 3;

(4) the summons-in-chambers by the judgment debtor to set aside the bankruptcy notice in encl 17;

(5) the affidavit in support of the judgment debtor in encl 16;

(6) the affidavit in reply by the judgment creditor in encl 19; and

(7) the additional affidavit affirmed by Mr Mathews George, the judgment debtor's solicitor, in encl 20A.

The factual matrix

This would be divided into three parts:

First part

It revolves in the sessions court. This was the beginning of the nightmare for the judgment debtor. In 1992, the judgment creditor filed a civil suit in the Johor Bahru Sessions Court vide Summons No 52-60-90-3 claiming against the judgment debtor and another for payment of the sum of RM49,222.30 together with interests and costs. Basically, the judgment creditor's claim against the judgment debtor was in respect of a hire purchase transaction where the issue was focussed on whether the judgment debtor was a party to the fraud and it was argued at the full trial before the sessions court. The judgment creditor's claim against the judgment debtor was dismissed by the sessions court and an appeal was eventually filed before the High Court.

Second part

The scenario has shifted to the High Court. The appeal was eventually heard by the High Court vide Civil Appeal No 12-27-1994 sometime in 1995 wherein the decision of the sessions court was reversed and judgment was entered against the judgment debtor. Victory finally went to the judgment creditor. Being aggrieved and dissatisfied with the High Court's decision, the judgment debtor lodged an appeal to the Court of Appeal vide Appeal No J-08-472-1996.

Third part

This involves the Court of Appeal. The judgment debtor's application for leave to appeal to the Court of Appeal was allowed on 3 November 1997. At the time of writing this judgment, the Court of Appeal has yet to give a date for the hearing of the appeal proper.

Bankruptcy notice

The factual background involving these three courts go a long way in understanding the position of the judgment creditor who like any successful litigant was eager to taste the judicial fruits of success (*Punca Klasik Sdn Bhd* [1996] 4 MLJ 533). Thus, relying on the High Court judgment, the judgment creditor proceeded to issue the bankruptcy notice against the

judgment debtor. The bankruptcy notice was duly served on the judgment debtor on 14 July 1997 by way of substituted service. The judgment debtor must have seen the advertisement in the Chinese daily — the *Sin Chew Jit Poh* dated 7 July 1997 — and, without further ado, the judgment debtor swiftly filed encl 17 to set aside the bankruptcy notice. By encl 17, the judgment debtor sought, inter alia, to:

(a) stay the bankruptcy proceedings pending the hearing of the appeal to the Court of Appeal;

(b) or alternatively to set aside the bankruptcy notice.

Agreed issue

The parties were very magnanimous and they agreed on only one crucial issue, namely:

> Whether the High Court judgment, which is pending appeal before the Court of Appeal, is a final judgment within the meaning and purport of s 3(1)(i) of the Bankruptcy Act 1967?

By all counts, the judgment debtor is a strategist. By filing an appeal to the Court of Appeal, the judgment debtor was indirectly derailing the bankruptcy actions contemplated by the judgment creditor. It would, of course, be unfair to castigate or penalise the judgment debtor for exercising his constitutional right of appeal. Be that as it may, my research shows that there is a scarcity of judicial ink on this crucial issue and for posterity this judgment is now written.

Strict and proper interpretation to the Bankruptcy Act 1967

Section 3(1)(i) of the Bankruptcy Act 1967 enacts as follows:

> (1) A debtor commits an Act of bankruptcy in each of the following cases:
>
> (i) if a creditor has obtained a final judgment or final order against him for any amount and execution thereon not having been stayed has served on him in Malaysia, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order with interest quantified up to the date of the bankruptcy notice, or to secure or compound for it to the satisfaction of the creditor or the court; and he does not within seven days after service of the notice in case the service is effected in Malaysia, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid and which he could not set up in the action in which the judgment was obtained or in the proceedings in which the order was obtained:
>
> Provided that for the purposes of this paragraph and of s 5 any person who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order; ...

and the crucial words employed therein would be 'final judgment' and these words should be given its strict and proper meaning. Thus, a strict interpretation would be that such a judgment is to be construed as final and conclusive even though that judgment is subject to an appeal or under appeal like the present case. I am fortified in my view by the passages appearing in the judgment of Lord Denning MR in the case of *Colt Industries, Inc v Sarlie (No 2)* [1966] 3 All ER 85 (CA) where at p 86, his Lordship said:

> At the present moment, the appellate process in the State of New York is not exhausted. It is possible that the Court of Appeals may give the defendant leave to appeal and may afterwards allow his appeal; but this is not sufficient of itself to show that the judgment is not final and conclusive. It is well established that, even though a judgment is subject to appeal, or under appeal, it is still final and conclusive so as to enable an action to be brought on it. That was clearly stated in *Nouvion v Freeman* (1889) 15 App Cas 1; 59 LJ Ch 337; 62 LT 189; 11 Digest (Repl) 513, 1282.

Here, the High Court judgment was a judgment emanating from a court of competent jurisdiction in Johor Bahru where it was pronounced and I have no difficulty at all to hold that that was a final and conclusive judgment notwithstanding the fact that there was a possibility that the Court of Appeal would allow the appeal.

It would be ideal to narrate briefly the facts in *Colt Industries Inc v Sarlie (No 2)*. In that case, the plaintiff recovered judgment for a sum of money against the defendant in the State of New York in the United States of America, and the defendant's appeal was dismissed. An application by the defendant to the Court of Appeals in New York for leave to appeal was pending. The plaintiff brought an action in England on the judgment and obtained summary judgment against the defendant. On the evidence of United States law, the judgment obtained in the State of New York was available throughout the States of the United States, though another State might delay judgment in an action on it until the pending appeal was disposed of. Incidentally, there was no convention between England and the United States providing for the reciprocal enforcement of judgments. So the plaintiff sought to get a judgment in England against the defendant and on 17 June 1965, the plaintiff issued a writ in England against the defendant seeking an English judgment on the New York judgment. The total sum converted into sterling was £875.189. The plaintiff applied for summary judgment against the defendant in England. The Master gave leave to defend conditional on the whole sum being brought into court. Lyell J gave judgment without condition and the defendant appealed. It was argued that the New York judgment was not final and conclusive in the country of its origin, and therefore, an action did not lie in England on it. The English Court of Appeal held that Lyell J was right in giving judgment against the defendant and forthwith dismissed the appeal. The decision of Lord Denning MR was concurred and agreed by Davies and Russell LJJ.

A final judgment determines the principal matter in question. A final judgment puts an end to the whole action by declaring that the plaintiff is

A the undisputed winner. Examples of final judgments are quite voluminous but for this exercise it would be sufficient to cite a few of them:

(1) a point of law determined by the court on a case stated by an arbitrator (*Shubrook v Tufnell* [1882] 9 QBD 621, CA);

(2) an order dismissing an originating summons after the trial of the issues
B would be similar as an order dismissing an action (*Re Fawsitt, Galland v Burton* (1885) 30 Ch D 231, CA);

(3) a foreclosure order made absolute (*Smith v Davies* (1886) 31 Ch D 595, CA);

(4) a consent order made in chambers dismissing an action with costs to
C be paid by the plaintiff (*Shaw v Hertfordshire County Council* [1899] 2 QB 282, CA);

(5) an order dismissing the originating summons for the delivery of a bill of costs by a solicitor for taxation purposes (*Re Herbert Reeves & Co* [1902] 1 Ch 29, CA);

D (6) an order dismissing an action at the trial of a preliminary issue of liability (*Bozson v Altrincham Urban District Council* [1903] 1 KB 547, CA);

(7) an application for costs out of the legal aid fund that was dismissed (*Hanning v Maitland* [1969] 3 All ER 1558, [1969] 1 WLR 1885, CA); and
E

(8) a declaration sought by the plaintiff that was refused by the court (*Gladys Sarah Becker v City of Marion Corp & Anor* [1977] AC 271, PC).

These examples are certainly not exhaustive and they are capable of expanding from time to time.
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In my judgment, a final order is final even though it is subject to appeal (*Marchioness of Huntly v Gaskell* [1905] 2 Ch D 656, CA). A judgment too may be final and be construed as such even though it merely directs an inquiry (*Light v William West & Sons Ltd* [1926] 2 KB 238, CA), or deals with only one issue like the issue of costs (*Marsden & Wife v The Lancashire*
G *and Yorkshire Railway Co* (1881) 7 QBD 641, CA; *The City of Manchester* (1880) 5 PD 221, CA; and *Forbes-Smith v Forbes Smith and Chadwick* [1901] P 258, CA), or is an order in relation to an interlocutory application (*A-G v Great Eastern Railway Co* (1879) 27 WR 759 at p 763).

In 1905, the English Court of Appeal had occasion to consider whether
H a judgment pending appeal to the appellate court was a final judgment. It was a case known as *Marchioness of Huntly v Gaskell* where Cozens-Hardy LJ said at p 667:

> It is urged that the judgment of the Scotch Court of Session is not a final judgment; but when the word 'final' is used, as I think it is in some authorities with reference to judgments, that does not mean, I apprehend, a judgment
I which is not open to appeal, but merely 'final' as opposed to 'interlocutory.' A judgment is, in my opinion, not the less an estoppel between the parties to the action because it may be reversed on appeal to the House of Lords.

Earlier on in 1903, Lord Alverstone CJ in his judgment in *Bozson v Altrincham Urban District Council* said at p 548: A

> ... .It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order. B

Mr PR Chua, learned counsel for the judgment creditor, argued that in so far as a judgment which is pending appeal is concerned, the test as to whether the judgment is final or interlocutory is not relevant. He said that an appeal would not change the character of a judgment whether it be 'final' or 'interlocutory'. Indeed, a judgment once delivered whether it be a 'final judgment' or an 'interlocutory judgment' can never change its character by merely filing a notice of appeal. Put differently, the labels 'final judgment' and 'interlocutory judgment' would remain as such notwithstanding the fact that there are pending appeals. Now, the judgment debtor vigorously through Mr Mathews George applied the test set out by Lord Alverstone CJ in the *Bozson*'s case. In that event according to Mr PR Chua, the judgment debtor applied the correct principles of law as enunciated by Lord Alverstone CJ in the *Bozson*'s case but applied it to a wrong set of situation. Was Mr PR Chua correct in his submission? With respect, I am of the considered view that even applying the test in the *Bozson*'s case, it would not make a whit of a difference. The High Court judgment emanating from the Johor Bahru High Court was a final and a conclusive judgment where the judgment creditor as a successful litigant was entitled to enjoy the fruits of their victory notwithstanding the fact that leave to appeal to the Court of Appeal was granted and that the appeal proper was still pending. C D E

In *Clyne v Deputy Commissioner of Taxation* (1982) 42 ALR 703, the Federal Court of Australia had occasion to interpret s 40(1)(g) of the Australian Bankruptcy Act 1966 which is similar to our s 3(1)(i) of the Bankruptcy Act 1967. In *Clyne*'s case, the debtor argued that a judgment of the Supreme Court in respect of the assessed income tax was not a final judgment because it did not finally dispose of the rights of the parties since the assessments were still pending and subject to review or appeal. Lockhart J rejected the debtor's argument and held, rightly, that the issues in the proceedings before the Supreme Court which resulted in the common law judgment were essentially different from those in the proceedings for review or appeal under Part V of the Income Tax Assessment Act 1936. His Lordship further held that the common law judgment established the previously existing liability of the applicant to the respondent and it finally disposed of the rights of the parties on the matters in dispute between them notwithstanding the pendency of an appeal to the Court of Appeal of New South Wales from that judgment leaving intact other issues to be determined in proceedings under Part V of the Income Tax Assessment Act 1936. F G H

I had time to deliberate. The journey is arduous. I have set out the two tests. The first test being the *Bozson*'s test that was born in 1903. The second test was the test known as the *Gaskell*'s test that was enunciated in I

1905. The third test would be the *Salaman*'s test which was enunciated very much earlier and this was in 1891. *Salaman*'s test can be seen in the case of *Salaman v Warner & Ors* [1891] 1 QB 734 and it requires one to look at the application and if a decision is given in whichever way which finally disposes of the matter in dispute, then it is said to be a final order. But if the decision allows the action to go on, then it is an interlocutory order.

I am constrained to say that the distinction between the *Bozson*'s test and the *Gaskell*'s test is this. In the *Bozson*'s case, one must look at the order or judgment made and one must ask the crucial question of whether the judgment or order made finally disposed of the rights of the parties.

The English Courts have dutifully applied the *Salaman*'s test (*White v Brunton* [1984] QB 570). In our beautiful country, our courts have adopted the *Bozson*'s test. Two examples need be cited. The first is the Federal Court decision in *Tee Than Song Construction Co Ltd v Kwong Kum Sun Glass Merchant* [1967] 2 MLJ 205, while the second is the decision of the Privy Council in *Haron bin Mohd Zaid v Central Securities (Holdings) Bhd* [1982] 2 MLJ 94. In the circumstances, I too am minded to apply the *Bozson*'s test. The High Court judgment was a judgment that was decided by way of an appeal from the decision of the sessions court. It finally disposed of the rights of the parties notwithstanding that the appeal proper to the Court of Appeal was still pending. The sessions court heard the case on a full trial basis and dismissed the judgment creditor's claim against the judgment debtor. To reiterate when the High Court in Johor Bahru heard the appeal, it had decided on the rights of the parties and its judgment must therefore be construed as final notwithstanding that the appeal was still pending in the Court of Appeal. This was my judgment and I so hold accordingly.

In *MSA Zachariah, Re; ex p Boon Siew Finance Bhd* [1993] 2 AMR 1158 at p 1169, the learned judicial commissioner said:

> That was a final judgment, albeit it is being appealed against to a judge in chambers. The appeal does not operate as a stay of the proceedings in which the appeal is brought, unless otherwise directed by the court (ie the court which is seized of the civil suit and not the court hearing the creditor's petition in the bankruptcy proceedings): see O 56 r 1(4) of the Rules of the High Court 1980. Therefore, the pending appeal in the civil suit to the judge in chambers on the ground that the charging of interest upon interest is void and unenforceable cannot be used to mount a collateral attack on the summary judgment in these bankruptcy proceedings or to sustain the purported notice [encl (4)] that the debtor disputes the petitioning creditor's debt.

Re Walter Su; ex p United Malayan Banking Corp Bhd [1987] 1 MLJ 44 was a case concerning the issue of a stay of bankruptcy petition on a judgment pending an appeal and Mohd Dzaiddin J (now FCJ) said that the mere fact that an appeal is pending over the judgment is not a sufficient ground for staying the proceedings upon the petition. The Court of Bankruptcy will not, as a matter of course, enquire into the validity of a judgment debt, but only when there is evidence that a judgment had been obtained by fraud or collusion, or that there has been some miscarriage of justice. In the present

case, there was no stay of the proceedings and the appeal to the Court of Appeal cannot operate as a stay. There was thus no impediment for the judgment creditor to issue the bankruptcy notice as the judgment was a final one. It is germane to note that in *Re Walter Su*'s case, the act of bankruptcy was founded on a bankruptcy notice under s 3(1)(i) of the Bankruptcy Act 1967 and the court refused to allow a stay as sought by the judgment debtor and forthwith ordered a receiving and adjudication orders against the judgment debtor. The judgment debtor appealed against the decision of his Lordship Mohd Dzaiddin J (now FCJ) and the Supreme Court (Abdul Hamid CJ (Malaya), Mohamed Azmi and Syed Agil Barakbah SCJJ) upheld the decision of the learned judge.

In the early part of this judgment, I adverted to the 'derailing' strategy of the judgment debtor and such method can compendiously be described as a delaying tactic which must be avoided at all costs. In this context, I am mindful of the sage observations of Esher MR in the case of *Re Flatau; ex p Scotch Whisky Distillers Ltd* (1888) 21 QBD 83 where at p 84 his Lordship succinctly said:

> The first point taken is, that the mere fact that an appeal against the judgment had been lodged made it the duty of the registrar to postpone the bankruptcy petition until after the appeal had been determined. If this be so, it will be in the power of every judgment debtor, if he sees that the Court of Appeal is full of business, to postpone the hearing of a bankruptcy petition founded on the judgment debt for months — it may be for years — by merely entering an appeal against the judgment.

That sums up the position of the judgment creditor who must be allowed to proceed with their bankruptcy notice.

In construing s 3(1)(i) of the Bankruptcy Act 1967, one must take stock of the elementary rule of construction. It is by assuming that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and if that is not the case then one must attach to it its ordinary meaning (*R v The Commissioners of Income Tax* (1888) 22 QBD 296; and *Corporation of the City of Victoria v Bishop of Vancouver Island* [1921] 2 AC 384). The next approach would be to construe the phrases and sentences according to the rules of grammar. Bayley J in *R v St Lawrence, Ramsgate (Inhabitants)* (1827) 6 B & C 712 at p 715 aptly said that:

> It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed.

Yet another sound approach would be this. In the event there is nothing to modify, alter or qualify the language which the statute contains, then those words and sentences must be construed in its ordinary and natural meaning (*Attorney General v Mutual Tontine Westminster Chambers Association Ltd* (1876) 1 Ex D 469; *Bradlaugh v Clarke* (1883) 8 App Cas 354; and *Re No 12 Regent St, Oxford* [1948] Ch 735). It must not be forgotten that the rule of construction is simply 'to intend the legislature to have meant what

they have actually expressed' (*R v Banbury (Inhabitants)* (1834) 1 A & E 136, per Parke J at p 682). In order to discover the intention of Parliament, one must go on a voyage of discovery by merely deducing from the language used (*Capper v Baldwin* [1965] 2 QB 53) and as Lord Morris of Borth-y-Gest said in *Davies Jenkins & Co Ltd v Davies (Inspector of Taxes)* [1967] 2 WLR 1139 at p 1156:

> ... It is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.

And when the language employed is so plain and admits of but one meaning, the task of interpretation becomes an easy chore. Donaldson MR in *Corocraft Ltd & Anor v Pan American Airways Inc* [1969] 1 QB 616 at p 638 said that 'the duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments'. It is also the court's duty to interpret an Act 'according to the intent of them that made it' (*Maunsell v Olins & Anor* [1974] 3 WLR 835 at p 838). *Animus hominis est anima scripti* (the intention of a man is the soul of what he writes). Tindal CJ said in *Warburton v Loveland* (1832) 2 D & Cl 480 at p 489 (HL):

> Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

Thus, in construing the words 'final judgment' in s 3(1)(i) of the Bankruptcy Act 1967, I must give effect to it notwithstanding the consequences that might flow from it. I must also bear in mind s 6(4) of the Bankruptcy Act 1967 which enacts that:

> When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt, the court may if it thinks fit stay or dismiss the petition on the ground that an appeal is pending from the judgment.

and if one were to interpret a judgment pending an appeal as not a final judgment then it would render nugatory this particular section. If the bankruptcy notice cannot be issued in the first place, then it would be pointless to have in our midst s 6(4) of the Bankruptcy Act 1967. It is only after the issuance of the bankruptcy notice that the court can act under s 6(4) of the Bankruptcy Act 1967 by staying or dismissing the petition on the ground that an appeal is pending from the judgment.

Applying vigorously the rule of interpretation as alluded to earlier, the expression 'final judgment' in s 3(1)(i) of the Bankruptcy Act, 1967 does not mean a judgment which is not open to an appeal. It simply means a judgment which is appealable. To interpret otherwise would fly in the face of logic and commonsense. It is also just, reasonable and sensible to interpret it in this way (*Holmes v Bradfield Rural District Council* [1949] 2 KB 1 at p 7). In my judgment, if a 'judgment' pending an appeal is to be construed not as a 'final judgment', then the ultimate consequence would be that only after the Court of Appeal's decision or after the Federal Court's decision would the judgment be final. This is certainly not the intention of

the legislature in enacting s 3(1)(i) of the Bankruptcy Act 1967. To interpret otherwise than what had been suggested by me would bring about dire consequences. The floodgates would open unabated and the judgment debtors throughout the country will have a field day. All the judgment debtors need do to avoid issuance of bankruptcy notices and, consequently, to avoid execution of the judgments through bankruptcy proceedings would be by filing notices of appeals. This should be avoided at all costs. Catherine Tay Swee Kian in her book entitled *Bankruptcy The Law and Practice* at p 1 itemized the objects of bankruptcy in these words:

(a) to secure a just and equitable distribution of the debtor's available property among his creditors;

(b) to relieve the debtor from his debts and to enable him to make a fresh start as soon as he is discharged by the court;

(c) to investigate into the reasons for the debtor's insolvency so that the interests of the creditors and the public are protected.

In my judgment, it would be premature at this juncture to set aside the bankruptcy notice.

Conclusions

The words 'final judgment' in s 3(1)(i) of the Bankruptcy Act 1967 must be construed as:

(1) a final and conclusive judgment notwithstanding the fact that the judgment is subject to an appeal or under appeal like the present case.

(2) it is a final judgment even though that judgment is appealable like the present case.

(3) it is a final judgment and the judgment creditor is entitled to issue the bankruptcy notice against the judgment debtor notwithstanding the fact that the judgment debtor has filed an appeal to the Court of Appeal.

On the date of delivering this judgment which was on 7 April 1999, I was informed by the parties that the Court of Appeal had on 23 February 1999 heard the appeal and dismissed the judgment debtor's appeal forthwith. This meant that the Court of Appeal affirmed the decision of the High Court.

For the reasons adumbrated above, I unhesitantly allowed the appeal in encl 22A with no order as to costs here and below.

Order accordingly.

Reported by Loo Lai Mee